

## GOVERNMENT CONTRACTORS – DO WE REALLY NEED THEM?

BY

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# USAWC STRATEGY RESEARCH PROJECT

## **GOVERNMENT CONTRACTORS - DO WE REALLY NEED THEM?**

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## **ABSTRACT**

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Over nine long years have elapsed since the tragic events of September 11<sup>th</sup> 2001 and the Global War on Terrorism that as of December 21, 2010 resulted in the loss of over 5,911 American Soldiers, Sailors, Marines, and Airman. Yet, not counted in these tragic statistics is the over 1,688 civilian contractors who lost their lives and over 37,000 wounded. This paper examines some of the significant strategic problems identified by the increased dependence of DoD on contractor support in forward operations. Specifically, this paper will analyze four specific areas: 1.) the ability or lack thereof to provide contract management oversight by military personnel; 2.) the legal limits of what services contractors may perform in a forward deployed environment; 3.) the lack of flexibility of the overall procurement system to meet rapid changing military strategies; and 4.) the ability of the military to properly leverage the use of contractors consistent with theater campaign objectives. In conclusion, this paper will make several recommendations designed to assist strategic decision makers concerning the policies and improvements necessary to ensure contractors are best utilized for any future contingency operation.





## GOVERNMENT CONTRACTORS – DO WE REALLY NEED THEM?

Key to beating the Taliban in Afghanistan will be the ability of U.S. forces to win support from the Afghan people, many of whom do not distinguish between U.S. contractors and the U.S. military. If we are going to win that struggle, we need to know that our contractor personnel are adequately screened, supervised, and held accountable -- because in the end, the Afghan people will hold us responsible for their actions.<sup>1</sup>

—Senator Carl Levin

Over nine long years have elapsed since the tragic events of September 11<sup>th</sup> 2001 and the Global War on Terrorism that as of March 3, 2011 has resulted in the loss of 5,911 American Soldiers, Sailors, Marines, and Airman.<sup>2</sup> Yet, not counted in these tragic statistics is the 2008 civilian contractors who lost their lives and over 44,000 wounded.<sup>3</sup> In addition, rarely discussed in the media is the startling fact that contractors exceeded the number of Service members on the ground in Iraq and Afghanistan.<sup>4</sup> There has been much research and analysis of whether contractors are value added?<sup>5</sup> That ship has left the port. Contractors are here to stay and will play a critical part in any future DoD operation. The larger and more important question is given the significant increase and dependence on contractors by DoD, what are the strategic, and policy implications of extensive contractor support in forward operations?

This paper will address some of the significant strategic problems identified by the increased dependence of DoD on contractor support in forward operations. Specifically, this research paper will analyze four specific areas: 1.) the ability or lack thereof to provide contract management oversight by military personnel; 2.) the legal limits of what services contractors may perform in a forward deployed environment; 3.) the lack of flexibility of the overall procurement system to meet rapidly changing military strategies; and 4.) the ability of the military to properly leverage the use of

contractors consistent with theater campaign objectives. In conclusion, this paper will propose several recommendations designed to assist strategic decision makers concerning the policies and changes necessary to ensure contractors are best utilized for any future contingency operation.

### Increased Use of Contractors by the Department of Defense

The explosion of contractor use by the Department of Defense (DoD) as measured by contractor personnel and dollars expended is stunning. DoD reported 207,553 contractors in Iraq and Afghanistan as of the second quarter of fiscal year 2010.<sup>6</sup> Security contractors accounted for 28,343 of the total number of DoD contractors for that same period.<sup>7</sup> During fiscal year 2009 and the first half of fiscal year 2010, a GAO report found that between DoD, State, and USAID 35.7 billion dollars were obligated for contract performance in Iraq and Afghanistan.<sup>8</sup> DoD accounted for 88% of the total contract obligations for fiscal year 2009.<sup>9</sup> A recent congressional research service report revealed that in 2010 DoD contractors comprised 54% of the total workforce in Iraq and Afghanistan.<sup>10</sup> This heavy reliance on contractor support within DoD is a trend that will continue in an era of a troubled U.S. economy facing a significant U.S. budget deficit, shrinking military budgets, military and civilian personnel cuts, and requirements to execute future small war contingencies in support of the national defense.<sup>11</sup>

### Background Concerning Use of Contractors by DoD

From a policy perspective, it is important to recognize the background of contractor use by DoD and to identify the reasons for this tremendous upsurge. The United States use of contractors in war dates back to the Revolutionary War.<sup>12</sup> At that time, the Continental Congress recognized the need for the provisions of food,

transportation, engineering, medical, and carpentry services.<sup>13</sup> Throughout American history the ratio of contractors to military personnel has varied based on the unique circumstances of each war as depicted in figure 1 below.<sup>14</sup> Figure 1 also reflects the increased expansion of the various types of contractor services performed as prevalent in Iraq and Afghanistan today.<sup>15</sup> Yet, most important to this review is the underlying reasons of why the United States now relies so heavily on contractors to support the missions of the DoD

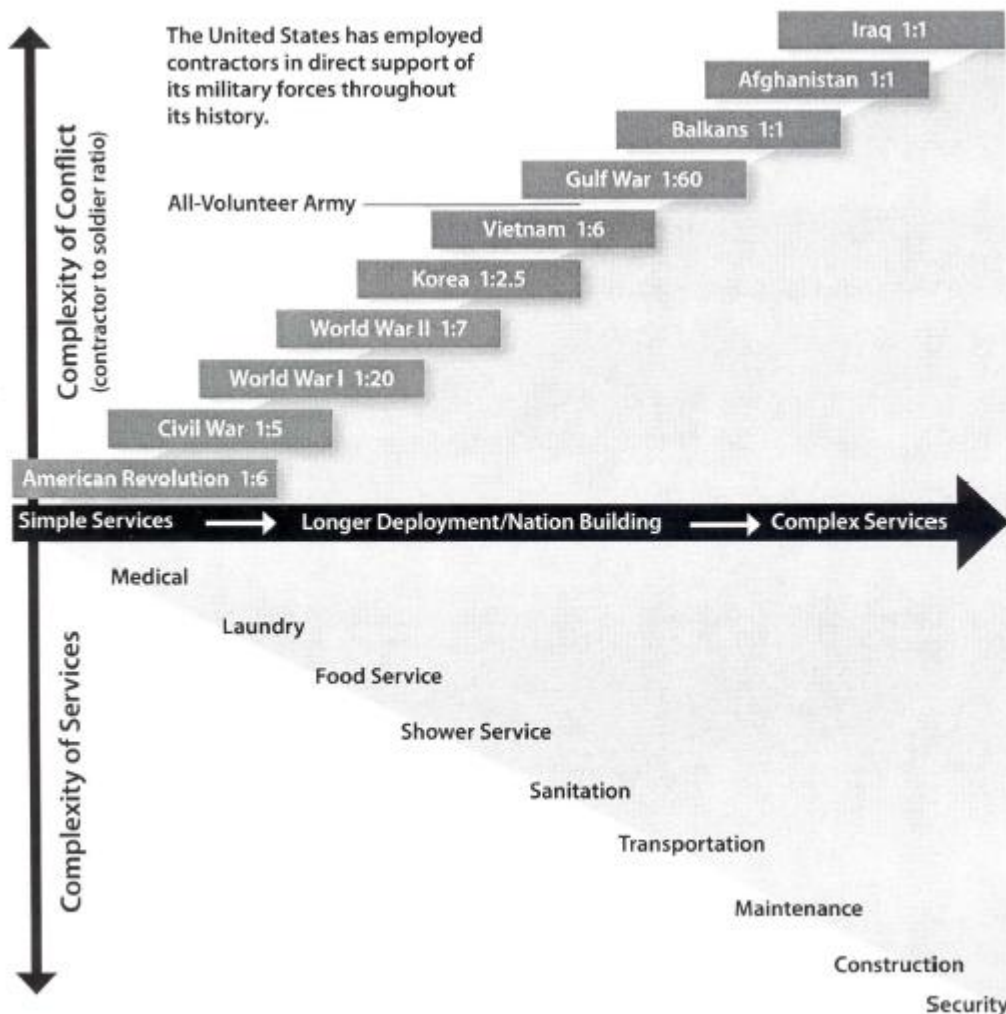


Figure 1:

### Reasons for Explosion of Contractor Use by DoD

The tremendous upsurge of contractor use by the United States as seen in Iraq and Afghanistan is a direct result of deep military personnel cuts over the years.<sup>16</sup> In the post-Cold War drawdown, the Army went from eighteen divisions to ten.<sup>17</sup> In addition, several government initiatives that favor outsourcing supported by both Republicans and Democrats alike have added to the staggering numbers of contractors used by DoD.<sup>18</sup> During the Clinton administration the United States experienced great economic growth but U.S. operations in the Balkans and the 1992 activation of the Army's Logistics Civil Augmentation Program (LOGCAP) triggered a trend in outsourcing logistics on a large scale.<sup>19</sup> Personnel cuts in the military and outsourcing go hand in hand with DoD efforts to get around force cap limitations for contingency operations.<sup>20</sup> The principle of contractor use as a force multiplier is commonly recognized because a commander faced with force cap limitations can increase combat power by the use of contractors.<sup>21</sup> Unlike combat service support Soldiers; contractor personnel do not count against force cap limitations, which allows a commander to deploy more combat forces into a theater.<sup>22</sup> Finally, the increase of weapons sophistication and complexity of the modern day asymmetric battlefield cause greater reliance on contractors with the expertise to maintain the intricate weapon systems of today.<sup>23</sup>

### Cost Factors Concerning Increase of Contractor Use by DoD

One other factor responsible for the increased use of contractors relates to cost under the premise that outsourcing is a cheaper alternative to military personnel.<sup>24</sup> The issue of cost effectiveness is not settled by any means and varies depending on the type of service contracted for.<sup>25</sup> In the private security sector it is commonly recognized that the costs associated with recruiting, training and developing a Soldier is more

expensive than quickly hiring a contractor with specialized skills for a finite period of time.<sup>26</sup> After the conclusion of an operation, a contract can be terminated and the contractor personnel will go away unlike a Soldier who will continue to stay on the payroll.<sup>27</sup> In addition to cost, the surge capacity and speed of getting contractors on the ground very quickly are benefits that DoD and the State Department have come to rely on.<sup>28</sup> In December of 2008, Erik Prince founder of Blackwater Worldwide stated the following concerning his company's operations in Iraq: "The government saw a need for highly experienced, highly trained Americans to protect our civilians abroad, and so it selected Blackwater."<sup>29</sup>

#### Failure by DoD Concerning Adequate Contractor Oversight

It is ironic that the increased use of contractors by DoD for reasons of cost savings and increased efficiencies has resulted in so many inefficiencies and problems for DoD. This is evidenced by the numerous reports of the Government Accountability Office (GAO) concerning the challenges of managing contracts and the stand-up of a Congressional Commission on Wartime Contracting.<sup>30</sup> The majority of the problems stem from the lack of adequate DoD contract administration to include the failure to obtain sufficient information to manage the contracts and track contractor personnel. The issue of contractor misconduct that often has the most potential to make negative world news is directly correlated to the lack of adequate contractor oversight. So, what does the term contract administration mean and what are the reasons why DoD continues to fall short in the eyes of Congress, the public, and the GAO?

#### Background Concerning Importance of Contract Administration

The term contract administration is defined in the Federal Acquisition Regulation in its simplest terms as part of the definition of Acquisition that consists of "those

technical and management functions directly related to the process of fulfilling agency needs by contract.”<sup>31</sup> Of course in practice, contract administration is far more complex and challenging than the definition would imply, especially in a forward deployed operation with numerous contracts and contractors operating on an asymmetric battlefield. The problem is compounded when contracting officers are located thousands of miles away from where actual contract performance occurs. Often, those individuals that are responsible for the administration of the contract and oversight of the contractors are inexperienced in dealing with contractors and not trained or familiar with the Federal Acquisition Regulation.

Integral to the contract administration process is the contracting officer representative (COR). The COR is delegated specific responsibilities from the contracting officer and is the primary point of contact with the contractor for issues of contract administration.<sup>32</sup> In 2008, the U.S. Army published the Deployed Contracting Officer’s Representative Handbook designed to provide some basic information tips to be used along with the formal COR training requirements which consists of a one week certification course.<sup>33</sup> One additional critical player in the administration of contracts is the commander responsible for the area of operations within which a contractor operates.<sup>34</sup> In a recent memorandum, General David Petraeus, Commander of the International Security Assistance Force and United States Forces – Afghanistan emphasized the import of increased oversight of contractors and designating top performers to serve in COR positions.<sup>35</sup>

In 2007, the Secretary of the Army recognized problems in expeditionary contracting within the Army and appointed Dr. Jacques S. Gansler, former Under

Secretary of Defense (Acquisition, Technology & Logistics) as the chairman of a commission to review these issues.<sup>36</sup> The Gansler Commission found that 3% of Army contracting personnel are active duty military despite a contracting workload that has increased by 600%.<sup>37</sup> The Gansler Commission recommended an increase to the Army acquisition workforce, additional training, and tools for expeditionary contracting personnel, and to restore responsibility for contract management in deployed settings.<sup>38</sup>

#### Failure of DoD to Conduct Contract Administration

The failure of DoD to provide adequate contractor management and oversight is a culmination of a downsized U.S. military dating back to 1991 and the ever increasing role of outsourcing to make-up for the functional deficiencies lost.<sup>39</sup> In recent testimony before Congress, Mr. William Solis, Director Defense Capabilities and Management identified several areas of contract administration that DoD has not made significant progress.<sup>40</sup> Specifically, Mr. Solis identified personnel shortages that hinder the ability of DoD to provide oversight and management of contracts.<sup>41</sup> He noted a DoD deficiency concerning the training of non-acquisition personnel such as unit commanders to foster effective working relationships with contractors in contingency operations.<sup>42</sup> Further, his testimony recognized that the SPOT system designed to track contractors is unreliable based on the data collected.<sup>43</sup> The tracking of contractors has been particularly embarrassing for DoD as Congress continues to request reliable data from DoD on the number of contractor personnel deployed.

In August of 2010, the DoD inspector General conducted an audit of 18 Army time-and-materials contracts and task orders for work conducted in Southwest Asia, which further highlighted the troubling state of affairs for adequate contractor oversight.<sup>44</sup> The DoD IG report concluded that the Army failed to perform adequate

contractor oversight on all 18 of the contracts and task orders reviewed.<sup>45</sup> Specifically, the Army failed to even check invoices. The report noted deficiencies of insufficient contractor oversight personnel at the locations where the work was performed. It also identified the failure of adequate filing systems, failure to prepare Quality Assurance Surveillance Plans, and that the Army allowed unauthorized contract rate increases.<sup>46</sup> Equally troubling is the fact that 10 of the 18 contracts reviewed failed to even identify contracting officer representatives at the time of contract award.<sup>47</sup> This snapshot in only one audit provides a glimpse of the significant problems DoD continues to face concerning contractor oversight.

#### DoD Oversight Failures Concerning Contractor Misconduct

One significant negative effect that has resulted from the explosion of contractors on the battlefield concerns the inability of DoD personnel to understand and properly resolve contractor misconduct. The strategic impact of severe contractor misconduct in a deployed setting is inextricably linked to the DoD mission. The very perceptions of the people the United States is trying to assist will not distinguish between military and contractor personnel.<sup>48</sup> Congress has attempted to provide DoD the necessary tools to prosecute contractors for criminal misconduct. Specifically, the Military Extra-Territorial Jurisdiction Act (MEJA) provides for the prosecution of DoD contractors in federal court for crimes committed overseas.<sup>49</sup> While the merits and success of MEJA are still to be determined the need for commanders and their staffs to fully understand all the tools available to them to enforce appropriate contractor conduct in theater has never been more significant.

As a worst case in point, in May of 2009, two employees of Paravant Corporation, a subsidiary of Blackwater Worldwide Corporation, killed two Afghan



civilians by shooting them.<sup>50</sup> An Army investigation conducted by the Combined Security Transition Command – Afghanistan found several instances of inappropriate conduct by the Paravant contractors before the murders were committed.<sup>51</sup> The investigation revealed that the commander of the camp was uncertain of his responsibility over the contractors working on the camp and that he was not familiar with what disciplinary measures he could take against contractors that did not abide by camp rules.<sup>52</sup> We may never know whether the May incident could have been avoided if DoD personnel took appropriate action to address earlier misconduct by these contractors. The lessons learned rings loud and true that education of our commanders concerning authorities and responsibilities of dealing with contractor misconduct is of strategic importance.

The most embarrassing contractor misconduct occurred at the U.S. Embassy in September of 2009 when a news story revealed several pictures of drunken scantily clad US Embassy security contractors dancing around a fire while urinating.<sup>53</sup> The photos also depicted the men engaged in lewd conduct to include hazing other guards by pouring alcohol over their naked backsides and attempting to drink it.<sup>54</sup> This incident triggered several inquiries into the Embassy security contract and was initially reported in a letter sent directly to Secretary of State Hillary Clinton.<sup>55</sup> The contractor involved in this incident had hired Nepalese Gurkhas, which accounted for two thirds of the total 450 guards at the U.S. Embassy.<sup>56</sup> Also, in an effort to reduce costs the contractor was in the process of releasing several Americans and replacing them with South Africans.<sup>57</sup>

The increased reliance on contractors has caused some comparisons with service members concerning the professionalism, motives, and dedication of

contractors.<sup>58</sup> This topic deserves much more detailed scrutiny but warrants some analysis here as it relates to contractor misconduct and the strategic concerns of reliance on individuals that may not share the same values or American ideals as the American public would expect.<sup>59</sup> In 2009, local nationals comprised 90% of private security contractors in Afghanistan.<sup>60</sup> In Iraq during the same period, 77% of private security contractors were third country nationals.<sup>61</sup> The nationality of a contractor will certainly have implications for prosecution of criminal misconduct but must also serve as a determinative factor in the strategic use of contractors by DOD. The recognition by senior DoD officials that private security contractors may not share the same values or overall American commitment to the mission should factor into the strategic implications of how to best use contractors depending on the contingency involved.

#### Legal Limitations of What Services Contractors May Perform

The vast number of functions that contractors now perform has renewed longstanding policy debates and legal issues concerning the proper role of contractors.<sup>62</sup> This issue dates back to the earliest days of the United States as arguments raged over the proper role of the federal government as compared to the private sector.<sup>63</sup> Specifically, the “Inherently Governmental” issue relates to whether the functions performed by contractors are tasks that require performance by government personnel as required by law.<sup>64</sup> The purpose of the laws in this area is designed to protect those functions of government “so intimately related to the public interest as to require performance by federal government employees.”<sup>65</sup> The increased use of contractors serving in a variety of military related functions raises the question of whether these activities are more appropriate for military personnel.<sup>66</sup>

Security contractors comprise only about 5% to 10% of the DoD contractors in Iraq and Afghanistan but receive the most Congressional interest in this public versus private debate.<sup>67</sup> The increased focus on security contractors is most likely the result of the several high profile incidents of misconduct most notably by the Blackwater firm.<sup>68</sup> The fact that private security contractors' duties so closely replicate actual military duties carried out by service members is another reason for the increased scrutiny of security contractors. In addition to the inherently governmental legal issues this causes, it also triggers a host of other international law issues under the law of armed conflict concerning the legal status of such individuals on the battlefield.<sup>69</sup>

The significance of the inherently governmental issue impacts the extent to which the DoD can continue to rely on the use of contractors in contingency environments. The issue has been further complicated by the asymmetrical battlefield of today placing contractors in much closer contact with enemy forces.<sup>70</sup> For many years there was no clear definition of the meaning of the term inherently governmental.<sup>71</sup> In 2010 Congress required the Office of Management and Budget (OMB) to identify a government-wide definition of inherently governmental and OMB adopted the definition as laid out in the Federal Activities Inventory Reform Act of 1998.<sup>72</sup> However, even with a central definition there is still ambiguous policy guidance on what specific functions falls into the category of inherently governmental, hence requiring government personnel to perform that function.<sup>73</sup>

The inherently governmental issue is something that commanders have had to grapple with in Afghanistan concerning the left and right limits of contractors training Afghan Border Police (ABP) to fight insurgents.<sup>74</sup> Specifically, can contractors legally

accompany Afghan Border Police off the forward operating bases to conduct real operations under the auspices of training and mentoring the ABP?<sup>75</sup> This very issue was recently addressed in an article written by Lieutenant General William Caldwell IV in which he states: “Contract restraints also prevent the placement of instructors in dangerous areas, even though these areas may be where they are most needed.”<sup>76</sup>

The other major problem with excessive outsourcing of key functions is the potential loss or erosion of in-house capacity of the government to fulfill critical functions.<sup>77</sup> In a July 2009 memorandum from the OMB Director, Peter Orszag, warns that the decision to outsource should not ignore the costs “stemming from of the loss of institutional knowledge and capability and from inadequate management of contracted activities.”<sup>78</sup> As budget cuts in the form of military personnel loom on the horizon for the DoD, the pressure to use contractors in increased roles that typically have been reserved for military personnel will continue in the future.

#### Lack of Flexibility in Government Acquisition Rules

One of the natural consequences of an increased reliance on contractors in forward deployed operations is whether the contractors will fulfill their contracts and give DoD the benefit of its bargain. However, there are measures within the FAR that Contracting Officer’s can utilize if a contractor fails to perform. However, what about a failure of the flexibility of the procurement system to adapt fast enough to changing military strategies to provide DoD the right services to accomplish the mission? Despite numerous efforts to streamline the government procurement process, the FAR and procurement system has become an over-regulated and overly bureaucratic legalistic system that often does not give DoD the flexibility needed to quickly change or adjust strategies in forward deployed operations. This problem recently came to the forefront

in Afghanistan concerning the contracting of police trainers for the Afghanistan Ministry of Interior.

On March 15, 2010, the U.S. Government Accountability Office sustained a protest decision in favor of DynCorp International LLC concerning mentoring, training, facilities, and logistics support services for the Ministry of Interior and Afghan National Police in general law enforcement and counter-insurgency activities.<sup>79</sup> The initial contracts were awarded on August 24, 2007 under full and open competition to several contractors and involved support of counter narcoterrorism efforts in Afghanistan and Columbia.<sup>80</sup> DoD attempted to issue task order requests for proposals under indefinite-delivery/indefinite quantity contracts to support mentoring, training, facilities, and logistics support services for the Ministry of Interior and Afghan National Police in general law enforcement and counter-insurgency activities consistent with the changing COIN strategy in theater.<sup>81</sup> The DoD argued that the contracts were within the scope of the original contemplated contracts because even though the Afghanistan Ministry of Interior and Afghan National Police are involved in counter-insurgency activities there is a nexus between counter-narcoterrorism and the drug trafficking. GAO decided that the original contracts did not contemplate the services requested by the TORPS deciding in favor of Dyncorp. Consequently, during a critical point in Operation Enduring Freedom, contractors did not fail to perform but instead used the GAO and legal process to thwart DoD's attempt to adjust to the strategic needs on the ground. Some would argue that DoD failed to plan properly in the instant case but circumstances in a deployed setting change very rapidly and the Federal Procurement system is not designed for quick flexibility based on the government's needs.

## The Challenge to Leverage Contracting Consistent with Theater Campaign Objectives

Government contracts are entered into with the end state of providing the Government necessary supplies or services to accomplish its mission. In the campaign planning process, the Government should attempt to integrate and leverage contracting consistent with the strategic ends that the Government is attempting to achieve. Unfortunately, the integration of contracting into theater planning routinely falls short resulting in second and third order effects not consistent with the goals of advancing the mission. This point is best illustrated recently when a spokesperson for Afghan President Hamid Karzai “challenged the United States to clean up fraud and corruption within the hundreds of millions of dollars of aid contracts it distributes to Afghan companies each year.”<sup>82</sup> President Karzai has routinely criticized the U.S. contracting process for not employing enough Afghans and contracting and subcontracting with dishonest individuals who do not adequately compensate Afghan workers. Further, the immediate expenditure of millions of dollars into a poverty stricken country like Afghanistan can result in several imbalances of power in a primarily tribal society.

On 8 September 2010, General David Petraeus issued counterinsurgency contracting guidance which emphasized that “contracting has to be Commander’s Business.”<sup>83</sup> General Petraeus brilliantly tied the importance of contracting to the overall COIN strategy addressing those key aspects in which contracting supports the overall strategy. Specifically, the memo highlighted the following key points: the value of contracting to bolster economic growth and stability in Afghanistan; know those with whom we contract to avoid fraud waste and abuse; take action when fraud and criminal misconduct is identified.<sup>84</sup>

## Recommendations for Improved Contractor Oversight

The DoD must do much better in the area of contract administration to avoid the expenditures of billions of dollars for supplies and services that do not meet the Government's needs as contemplated under the contracts. The DoD has reached a critical point that will define contractor use in future operations based on the ability to implement several sound recommendations gleaned from the wide array of commissions, professional studies, Congressional Hearings, IG investigations, high profile cases of contractor misconduct, fraud, waste, and abuse over the last nine years. The time for action has arrived and the status quo can no longer prevail to the detriment of the mission.

One fundamental problem is the lack of acquisition personnel and the lack of understanding of contracting rules and regulations by non-acquisition personnel so critical to the function of contractor oversight. The significant increase of contractor use necessitates an equivalent increase of both acquisition personnel and increased training and tools for non-acquisition personnel. The development and training of enlisted Service members in the acquisition field will reap significant benefits in successful contract administration. Mandatory contract training of service members deploying to a contingency operation as a contracting officer representative or as a commander should be required.

In addition to short-term deployment training, additional contract instruction throughout the military education process to include officer basic courses, ILE, and at the War Colleges should be required. It is reckless to rely on contractors to such a great extent but not train adequate military personnel to interact, solve problems, and provide knowledgeable oversight of contract work to be performed. The selection of the

very best personnel to serve as contracting officer representatives as suggested by General Petraeus would greatly improve the standards of contractor oversight. Equally important is commander level emphasis to ensure that contracting officer representatives do not have other duties that conflict with the contract oversight mission. If the military culture does not recognize the import of this duty, additional pay incentives could help guide quality personnel towards this critical endeavor and career field.

The duties of a contracting officer representative do not require performance by a military service member but may be accomplished by civilians accompanying the force. However, significant increases in both military personnel and civilians is required to ensure the important duties of contract administration occurs to avoid the lost dollars and embarrassments of the last several years. Finally, it is critical that our most senior leaders stress accountability and the highest professionalism in the contracting arena. The DoD cannot continue to rely so heavily on contracting in contingency operations but provide so little attention and support to the actual execution of contract administration..

#### Recommendations to Simplify What Functions Contractors may Perform

The increased use of contractors as a critical component to help DoD achieve the missions it is called to conduct is a trend that will continue to occur in the future. As a result, to maximize the full potential of contractors in support of any given mission it is imperative that clear rules lay out exactly what functions a contractor may or may not perform in a contingency environment. Some experts have advocated that to simply provide a list of functions that contractors may not perform as inherently governmental functions would limit the Government flexibility in extreme situations.<sup>85</sup> Yet,



commanders need clear guidance and to avoid this issue especially concerning private security contractors will continue to place restraints on how DoD operates.

The establishment of certain functions deemed inherently governmental will eliminate ambiguity in this area and will further advance DoD's ability to best utilize contractors to conduct missions based on clear direction. It will remove the guessing game that places commanders and their staff in difficult time consuming debates on the appropriate use of contractors. There is a golden opportunity to simplify this legal quagmire once the Commission for Wartime Contracting issues its final report in 2011 that is expected to address "inherently governmental" functions.<sup>86</sup> However, time and time again Congress issues recommendations that simply do not get acted on and so the DoD will need to be prepared to work with Congress to establish and codify into law a list of those functions that are inherently governmental.

#### Recommendations to Simplify the Flexibility of the Acquisition Process

The U.S. Government Contracting process has faced several reforms over the years to simplify and streamline this incredibly complex process. Unfortunately, all of the rules and regulations have created a system that is not flexible enough for sudden changes in policy and has created different standards within the executive branch. Congress needs to design special rules for contracting in a contingency environment that will give DoD more flexibility to implement its mission. The situation that occurred within the DynCorp bid protest may be suitable for a contract in a peacetime situation in which there is time to await a decision from the GAO. However, in the complex environment of contingency operations today, legalistic procedural rules that allow contractors to file bid protests can completely delay and in some cases thwart the implementation of DoD plans and operations. The rules under the Federal Acquisition

Regulation do account for national security reasons to trump normal procedures but they are rarely used and run the risk that GAO will later not agree with the prior decision by DoD to play the national security card. This recommendation advocates for a separate class of rules that allows for fair competition but very limited rules that would streamline any potential protests so that DoD has the flexibility to make quick changes in a theater campaign plan without the fear of legal work stoppages.

#### Recommendations to Leverage Contracting Consistent with Theater Campaign Objectives

Like today, the complex global environment of the future can count on a determined enemy and the ability of the DoD to succeed depends on the successful integration of contractors into the campaign objectives.<sup>87</sup> Consistent with the 8 September 2010 General Petraeus memo, commanders and their staffs must ensure that contracting is “commander’s business.” Strategic planners must incorporate contracting into the planning process and as a means to not only provide critical functions but also as a way to advance strategic ends within a given theater. Even more importantly, commanders must be persistent to ensure that contracting activities do not work counter to the efforts necessary to achieve the desired ends. Consequently, a deliberate and planned procurement approach can enhance economic development and build stability within an economically depressed area of operations.

The following recommendations can provide a value added approach to contracting above and beyond the simple aspect of providing supplies and services. Combatant Commanders and their staffs must ensure that government acquisition experts and subordinate commands focus on how contracts can achieve campaign objectives with less focus on cost, schedule, and performance. In addition, acquisition

personnel must become familiar with the various contractors they are dealing with to avoid fraud and coercive business practices. This will require acquisition personnel and end users to get out and become familiar with the key players in a given area. Of course, all of these measures will require the adequate allocation of trained government personnel to ensure robust acquisition support to accomplish these theater objectives.

The discussion of fraud, waste, and abuse within acquisitions does not only hurt the United States but also erodes efforts abroad in a contingency environment. In the absence of sufficient government oversight, funds designed for acquisitions can foster corruption and support the very insurgents we are working against. Commanders must be vigilant in supporting the identification, reporting, and prosecution of contract fraud waste and abuse in theater. The need for contract oversight, sound financial tracking systems, and audit support will ensure that money is carefully disbursed to it does not fall into the wrong hands.

### Conclusion

In every conflict and war from the very beginning of our Nation to the present demonstrates the U.S. reliance on contractors to successfully achieve the mission. Unfortunately, as our Nation has become more heavily dependent on contractors to do more functions there has not been a corresponding increase in government personnel to provide key contract oversight. The left and right limits of what contractors may perform are ambiguous at best. The procurement process itself needs reform to increase flexibility to best utilize contractors to achieve the desired results. While these are not easy issues to solve, they require a commitment from both Congress and the

Executive Branch to work together to resolve these issues in the best interests of our Nation.

The strategic implications of following the status quo will only result in additional negative findings and Congressional inquiries concerning the appropriate utilization of contractors. The question of do we need contractors is no longer the appropriate question.<sup>88</sup> Rather, the question that really needs attention and sound resolution is how can the United States best utilize the ultimate force multiplier of the DoD contractor. Contractors are here to stay but whether they provide value and help achieve the mission is up to us as part of “Commander’s Business” to get after it.

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